

## REQUIRED FISMA REPORT COMPONENTS

**AGENCY NAME:** Business Transportation and Housing Agency  
**DEPARTMENT NAME:** Department of Alcoholic Beverage Control  
**ORGANIZATION CODE:** 2100

### INTRODUCTION:

In accordance with the Financial Integrity and State Managers Accountability (FISMA) Act of 1983, the Department of Alcoholic Beverage Control submits this report on the review of our systems of internal control for the biennial period ended December 31, 2009.

Should you have any questions please contact Ed Jimenez, Assistant Director, Administration at (916) 419-2511, and email [Ed.Jimenez@abc.ca.gov](mailto:Ed.Jimenez@abc.ca.gov).

### BACKGROUND:

Upon the repeal of Prohibition in 1933 and the return of the legal sale of alcoholic beverages to California, taxation and regulation of the manufacture, distribution, and sale of alcoholic beverages were given to the State Board of Equalization. In 1955, an amendment to the State Constitution became effective removing the authority from the State Board of Equalization and placing it in the new Department of Alcoholic Beverage Control.

California Constitution, Article XX, Section 22, vests the Department of Alcoholic Beverage Control (ABC) with the exclusive right and power to license and regulate the manufacturer, importation, and sale of alcoholic beverages within the State. The Department is authorized approximately 460 positions and is organized into three major divisions, and twenty-four District Offices charged with the responsibility to address these requirements.

The mission of the Department of Alcoholic Beverage Control is to administer the provisions of the Alcoholic Beverage Control Act in a manner that fosters and protects the health, safety, welfare and economic well being of the people of the State.

### VACANT POSITIONS:

ABC is in full compliance of the provisions of GC 12439. ABC closely monitors its vacant positions to ensure compliance and takes appropriate action to avoid loss of positions due to GC 12439.

### RISK ASSESSMENT:

The development of the Strategic Plan was a comprehensive analysis, both internally and externally, to identify the issues and trends that could impact the Department's ability to carry out its mission. This also included surveying our external stakeholders and customers and their needs and expectations. The resulting Strategic Plan and goals and objectives are still important and reviewed to ensure their continued relevance.

ABC's executive management is continually assessing its business functions and operations as they relate to its performance goals and objectives. Through its "Going for the Goals" the Department is able to 1) Prioritize its efforts; 2) Prioritize its resources; and 3) Communicate our successes to stakeholders. The specific objectives involved our "core" licensing and enforcement programs and included the following:

## Licensing

Strategic Goal #1 - Improve the efficiency of ABC's licensing process (as is defined by the date of request to file the application through the date of issuance, denial, or withdrawal)

Strategic Goal #2 - Improve the consistency of ABC's licensing process

Strategic Goal #3 - Improve the effectiveness of ABC's communication with stakeholders

Approximately 50% of ABC's resources are devoted to its licensing mandate. Currently, Licensing Representatives investigate about 61 different types of applications for alcoholic beverage licenses and report on the moral character and source of funds of the applicant and suitability of the proposed premises.

There is a 30-day statutory waiting period for all permanent licenses, whether an original (new) license or transfer of an existing license. During this period, ABC notifies the public and local officials of the application. The 30-day period gives community members the chance to decide whether issuance would adversely affect their community, to voice their concerns, or officially protest. The actual time it takes to issue a license can be delayed due to a number of factors. These include liens placed against escrow by taxing agencies, protests, and local governing body decision-making processes concerning public convenience and necessity in high crime or over concentrated areas as well as local land use zoning decisions. Also, in an ownership transfer of an existing license, the local government may request that additional conditions be added to the newly-transferred license. This is to prevent a problematic location from continuing to cause problems for a community.

## Statistics

- As of October 30, 2009, there were 81,659 licenses in the State, which includes convenience stores, liquor stores, restaurants and bars.
- The number of original license applications filed annually has fallen steadily since December 2007, and fell by approximately 26% in the last year alone. This reduction is tied directly to the worsening of the economy in California since the fall of 2007. About 27,000 temporary "special event" permits are issued each year to qualifying non-profit organizations.

## Enforcement/Compliance

Strategic Goal #1 - Increase compliance with the provisions of the Alcoholic Beverage Control Act

Strategic Goal #2 - Improve the efficiency of ABC's enforcement process

The function of the Enforcement/Compliance Program is to investigate violations of existing laws and educate licensees to prevent violations. ABC takes disciplinary action against licensees who violate, or whose employees violate, existing laws. Effective and efficient investigations foster and protect the public safety and welfare by ensuring that licensees and their premises are not involved in criminal activity; and, if they are, action is taken to halt it.

Approximately 50% of the Department's resources are devoted to its enforcement mandate. Investigators are assigned to the 24 field offices, the Special Operations Unit (SOU), Trade Enforcement Unit, and Special Programs. SOU acts as an enforcement strike force to address disorderly premises, underage drinking, major violator investigations, field enforcement, interagency law enforcement task forces, and enforcement at special events. The Trade Enforcement Unit (formerly "Business Practices Unit") investigates trade practices violations committed by the industry such as commercial bribery, "payola", illegal merchandising and advertising activities, exclusionary and predatory marketing practices and prohibited business practices between suppliers and retailers and between suppliers or retailers and the consumer.

## Statistics

- ABC Investigators conduct approximately 8,500 enforcement investigations each year.
- ABC Investigators made approximately 2,700 arrests, and make another 1,500 arrests as a result of joint investigations with local law enforcement agencies each year. The Department is second only to CHP in annual number of arrests.
- ABC files an estimated 2,500 disciplinary accusations against licensees each year.
- ABC assesses and collects approximately \$4 million in fines as a result of disciplinary accusations each year.

The Department tracks the goals and objectives on a monthly basis and utilizes the information to assess our operational efficiencies and effectiveness and develop new strategies to address areas of concern.

## EVALUATION OF RISKS AND CONTROLS:

**Risk:** Information Technology - Outdated Computer System California Alcoholic Beverage Information Network (CABIN)

Originally purchased as a customizable commercial off-the-shelf (COTS) solution in 1993, the California Alcoholic Beverage Information Network (CABIN) system was intended to support enterprise-wide licensing and compliance business objectives. In an ongoing effort to meet the Department's needs, CABIN has undergone customization of licensing features and the Oracle client software has been upgraded. However, even with these modifications, CABIN no longer effectively supports the Department's licensing and compliance activities. The Oracle database versions are at the end of their lifecycle and are unsupported. CABIN is not compatible with Windows and requires Macintosh client hardware that is six to ten years old and beyond any realistic useful lifespan.

## **Actions to Mitigate Risks:**

Since FY 2003/04, the Department has undertaken several efforts to upgrade the network infrastructure and procure an appropriate Licensing and Compliance System (LCS) – CABIN replacement. These efforts included a Feasibility Study Report (FSR) planned for an expedited procurement process due to the low risk rating of the project, known vendor community and COTS project type. A Finance Letter was submitted

and approved in the Spring of 2005 requesting dollars be moved from FY 04/05 to budget year 05/06. Ultimately the RFP process was completed and Intent to Award was announced in November 2005 to Computronix. A protest was filed by a competing vendor shortly thereafter.

While the protest ensued, ABC submitted a Special Project Report (SPR) in February 2006. This SPR was approved March 30, 2006 based on a revised start date of May 1, 2006 when it was believed that the project would resume. The protestant was defeated and the contract with Computronix was executed on April 20, 2006. The protesting vendor filed a civil action and the matter was resolved and the injunction removed and work commenced November 2006. The contract was amended to reflect a revised project schedule adjusted for the nearly seven month delay since the last approved SPR. A new SPR was submitted and approved as of March 2007 with the expectation that the project schedule would potentially undergo modifications upon the completion of the gap analysis in late May 2007.

In June 2007, the analysis revealed a gap too significant to proceed with the project under the original design premise as proposed in the vendors bid response. Based on the extensive technical and functional requirements outlined in the RFP, Computronix proposed the use of a fully configured version of their COTS product in use with a Canadian liquor licensing government entity as the base product from which ABC's configuration would be developed. Although the vendor estimated an 80% fit between the pre-configured product and ABC's business model became clear that even though ABC's business model has workflow similarities, the deeper detail of how ABC performs its business is drastically different. So much so, that the preconfigured COTS is realistically less than a 20% fit according to Computronix. The revised project completion date end date was changed from May 2008 to March 2009.

As work continued toward our targeted "Go Live" date, the tragic passing of the lead project programmer from Computronix in January 2009 significantly impacted project deliverables. The individual had developed a thorough understanding of ABC's work which had facilitated the programming efforts. Computronix was now required to redirect resources on the project and identify an in-house replacement. Although another programmer was brought on board to take on this effort there was a significant learning curve involved.

Also compounding the "Go Live" date was the implementation of 2 Furlough Days per month of staff beginning in February 2009. This resulted in approximately 96 lost work hours per month by Department IT staff alone. The implementation of a 3<sup>rd</sup> Furlough Day beginning July 2009, added an additional 48 lost work hours per month. Both of these factors are risks that impacted completion of project as originally planned. It is now anticipated that completion of the project will occur in early spring of 2010.

The Alcoholic Beverage Information System (ABIS) project, however, does retain the services of a (consultant) project manager and independent project oversight consultant under a separate contract. This contract is currently being modified to cover the extended schedule.

**RISK:** Organizational Redesign Initiative – Ability to meet the increasing demand for more ABC license applications to be completed utilizing available resources.

**Actions to Mitigate Risks:**

The Department's re-organization plan was initiated to enable the Department to operate more efficiently by effectively utilizing its authorized and allocated personnel

positions. In an attempt to reduce personnel services costs and improve customer service, the Department established the Licensing Representative I classification in 1992. The duties of this classification were to conduct the most basic ABC license application investigations for the Department. Prior to that time all licensing investigations were conducted by ABC's sworn peace officers. Performance of this licensing duty significantly limited their ability to conduct enforcement investigations and their other public safety functions at businesses already licensed by ABC.

In 2001, the Licensing Representative II classification was created to handle the full range of licensing functions. Since the Licensing Representative classifications were created, 67 peace officer positions have been converted to this non-sworn level. As a result, our customer service to businesses desiring an ABC license has dramatically improved. In addition, although the authorized number of ABC peace officers was reduced to create the Licensing Representative positions, the number of arrests and accusations filed against ABC licensed businesses increased.

In late 2005, with the Licensing Representative classifications still reporting directly to sworn Supervising Investigators and District Administrators, the Department began internal discussions regarding the development of the Licensing Representative Supervisor and Licensing Representative Manager classifications.

In April 2007, ABC initiated a contract with Cooperative Personnel Services (CPS) to create the Licensing Representative Supervisor and Licensing Representative Manager classifications. During this effort it became apparent that creation of a Department specific supervisory classification faced significant obstacles in obtaining the desired outcome. Specifically, the Licensing Representative I & II classifications are in the "Safety" category for retirement purposes. In discussions with DPA staff, ABC Executive management was informed that the proposed supervisory classification being considered would not be placed in the same retirement category.

Without this benefit, there would be no incentive for current incumbents to consider moving into this supervisory classification as a potential career move. After further analysis and review of other classification alternatives it was determined that use of the Servicewide classifications of Staff Services Analyst, Associate Governmental Program Analyst and Staff Service Manager I was more appropriate. A formal proposal to accomplish this was submitted to DPA in July 2009. To date, there has been no formal response to our proposal by DPA.

**RISK:** Sworn Staff Recruitment and Retention - Ability to provide essential public safety services at venues where alcoholic beverages are sold and consumed.

ABC continues to face a significant recruitment and retention issue within its Investigator classification series. ABC's overall Investigator vacancy rates (combination of all three classifications within the series) have historically ranged between 8% to 12% (or 12-17 Department wide vacancies) out of the 145 authorized positions. Since January 2008, ABC lost a total of 29 Investigators to other State agencies. Historically, the trend has been that ABC Investigators transfer to departments utilizing Investigator classifications with limited peace officer authority and the identical base salary as ABC Investigators. The dramatic differences in working conditions, personal risks and the pay similarities between the ABC Investigator classifications and all other Investigator classifications have substantially contributed to the Department's inability to retain its sworn staff. Couple this with the fact that other departments with similar sworn classifications such as DOJ, Special Agent, and OIG, Deputy Inspector classifications top step maximum

monthly salaries provided range from nearly 19% to 29% higher than the top step maximum monthly salary for the ABC Investigator II classification.

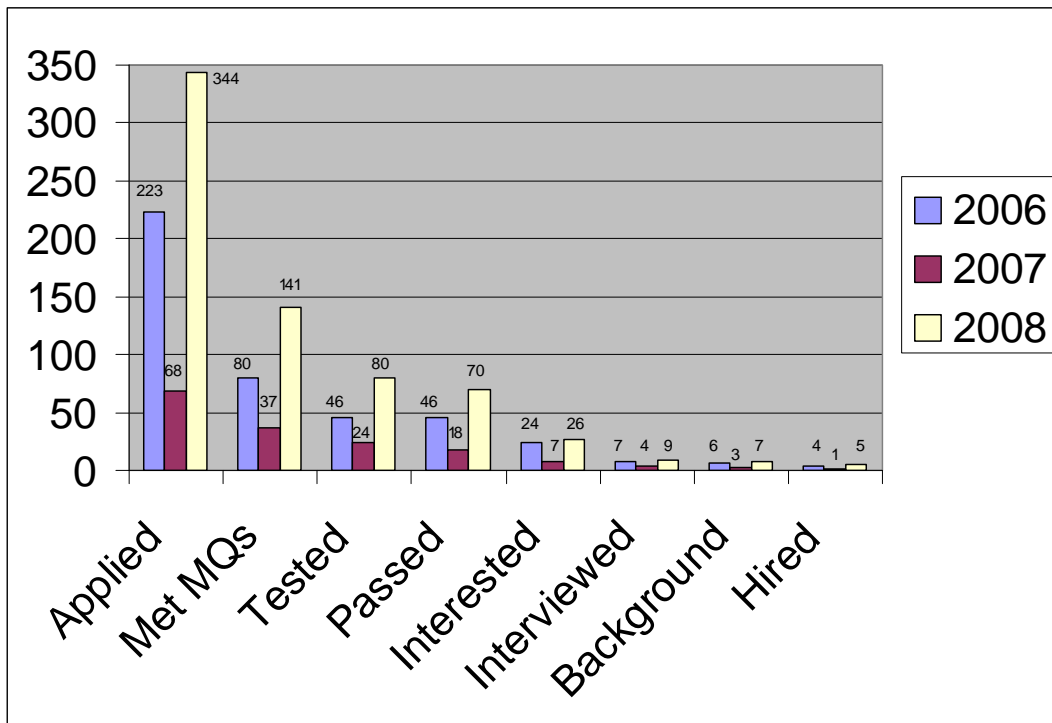
ABC Investigators make up the only Investigator classification in State service to have full peace officer authority. This authorizes ABC Investigators to assist all other full peace officers in the State (i.e., Sheriff and Police Departments, California Highway Patrol, Department of Justice, etc.) to provide a full range of essential public safety services to the residents of California. No other Investigator classification in State service has nor requires such a broad range of peace officer powers to perform their mandated functions. In fact the limited peace officer powers granted to all other Investigator classifications restrict their authority to only specific areas of law in those instances when they are performing their primary duties.

This difference in peace officer authority is substantial. It sets ABC Investigators apart from all other Investigators by authorizing them to enforce any and all provisions of law, anywhere in the State, while specifically focusing on those laws that are violated in and around venues where alcohol is sold and consumed. ABC Investigators routinely conduct investigations, serve search warrants and make spontaneous on-view arrests for dangerous illegal activities involving alcohol, narcotics, gang activity, organized crime, illegal weapons, fights, disorderly activity, gambling and prostitution at all hours of the day and night throughout the State under the auspices of their full peace officer authority. All other Investigator classifications with limited peace officer authority conduct primarily white-collar crime investigations during daylight hours working Monday through Friday.

We believe that the significant differences in working conditions and pay inequities discussed above between the ABC Investigator classifications and all other Investigator classifications has contributed to a dramatic reduction in candidates interested in the ABC Investigator classification series. In an effort to address this risk and increase the candidate pool and fully bifurcate the licensing duties from the Investigator classification, ABC began work to prepare a classification proposal to revise the sworn Investigator classifications in December 2007. The classification proposal would: 1) change the classification title to Agent in order to more accurately describe the work ; 2) change the minimum qualifications which would significantly increase the candidate pool for each classification and; 3) request a 10% salary adjustment to bridge the gap between our peace officers and those at other departments. Also it would more clearly identify the law enforcement and public safety duties essential to these positions. The classification proposal was completed and submitted to DPA in October 2008. Due to workload priorities and other classification proposals being considered as part of the HR modernization plan by DPA, the department has not received a formal decision on our proposal as of December 2009. The Department continues to regularly monitor the status of this proposal.

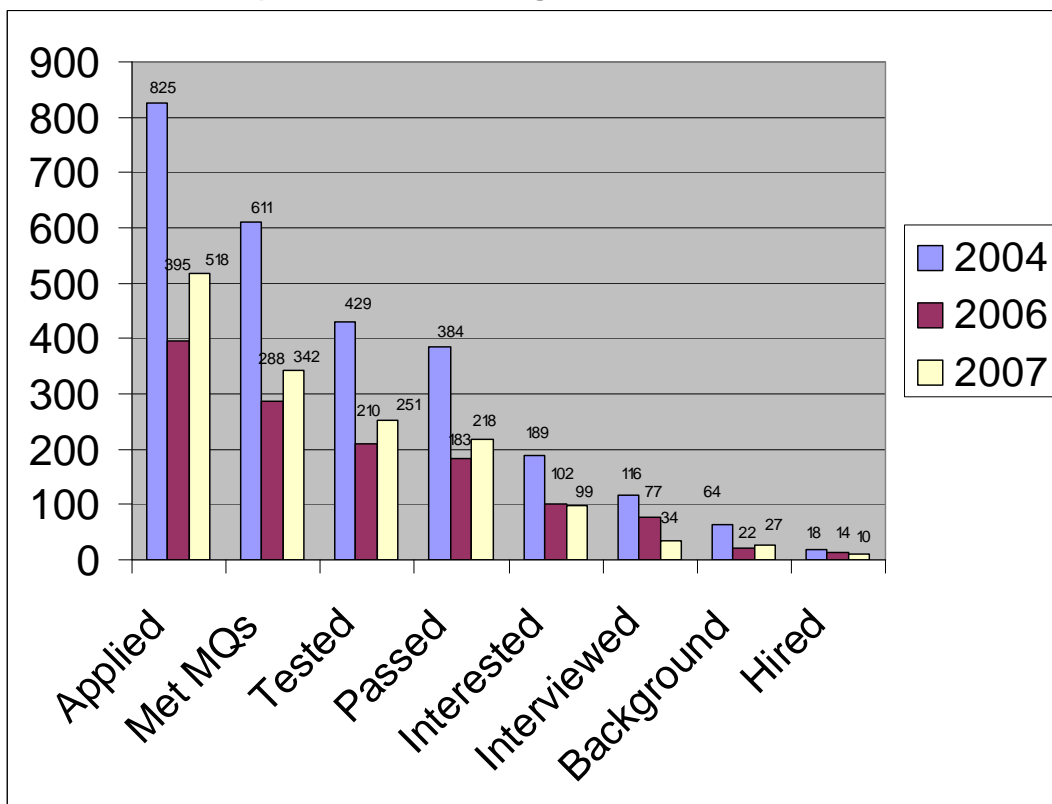
Since December 2007, ABC has completed the examination process for all three levels of the ABC Investigator series. ABC continues to recruit and fill vacancies from these lists as well as through transfers from other departments. All viable candidates from the Investigator I & II eligible lists continue to be contacted for ongoing vacancies with minimal success. As of the date of this audit, ABC has 30 Investigator vacancies (combination of all three classifications within the series). Historically between 27-28% of the candidates who start the background process with ABC are offered and accept employment with the Department. The results of each testing process are discussed in more detail below.

**Graph #1 – ABC Investigator II Candidate Pool**



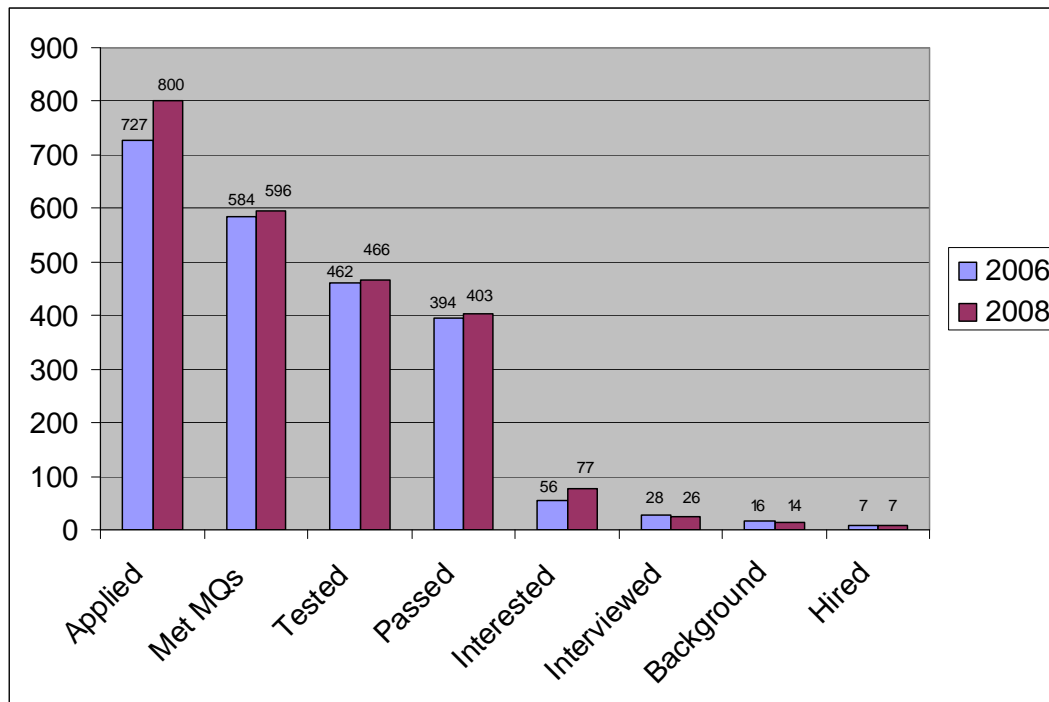
ABC Investigator II (OPEN) – In 2006 the Department created and implemented the ABC Investigator II (Open) examination to increase its candidate pool. Since then, ABC has offered the examination on a continuous filing basis. The total number of candidates applying for the ABC Investigator II classification increased from 2007. The increase is directly related to the staffing reduction seen in other law enforcement jurisdictions due to the fiscal constraints they are facing. (See Graph 1 above)

**Graph #2 – ABC Investigator I Candidate Pool**



ABC Investigator I (OPEN) – The last examination for the ABC Investigator I (Open) classification was completed in late November 2007. The number of candidates reaching the background phase of this hiring process was only 11% of those who tested. From the original 518 candidates that were interested in the most recent Investigator I test, the Department was only able to successfully hire 10 candidates from this list. (See Graph 2 above)

**Graph #3 – ABC Investigator Trainee Candidate Pool**



ABC Investigator Trainee (OPEN) – Graph 3 shown above depicts the outcome of the most recent ABC Investigator Trainee (Open) examination conducted in 2008 as well as the data for 2006. Although 800 candidates applied more than half of the candidates failed to obtain list eligibility. This has been the ongoing trend for all classifications tested.

### **Actions to Mitigate Risks:**

ABC continues to pursue a viable classification and salary structure commensurate with the duties and responsibilities being performed by ABC Investigators. ABC has also dramatically increased its testing schedule and recruitment efforts to fill its sworn vacancies. Highlights of those efforts are listed below:

- January 2008 – Investigator II (Open) continuous test conducted.
- April 2008 – Investigator II (Open) continuous test conducted.
- April 2008 – Investigator II Promotional test conducted.
- June 2008 – Investigator II Promotional test conducted.
- June 2008 – Investigator I Promotional test conducted.
- June 2008 – Investigator II (Open) continuous test conducted.



- August 2008 – Recruitment of Retention Pay Differential for Los Angeles, San Diego, Santa Clara and Sonoma Counties for Investigator classifications was submitted and denied by DPA.
- August 2008 – Education Pay Differential for District Administrator and Deputy Division Chief classifications were submitted and denied by DPA.
- September 2008 – Investigator II (Open) continuous test conducted.
- January 2009 – Investigator II (Open) continuous test conducted.
- January 2009 – Investigator I Promotional test conducted.
- January 2009 – Investigator I Promotional test conducted.
- April 2009 – Investigator I Promotional test conducted.
- January 2009 – Investigator II (Open) continuous test conducted.
- October 2009 – Investigator II Promotional test conducted.

Note: The above efforts were in addition to those efforts previously reported in the December 2007 FISMA report.

#### **ADDITIONAL RISK ASSESSMENT:**

In January 2009, the Department of Finance, requested that the Office of State Audits and Evaluations (OSAE), began work to conduct a review the adequacy of ABC's policies and procedures over its federal grant management and budgetary processes and reconstructed ABC's (Fund 3036) fund condition statements for fiscal years 2003-04 through 2007-08. The OSAE review was conducted in accordance with the Financial Integrity and State Manager's Accountability Act. The OSAE review recommended that ABC's policies and procedures related to its federal grant management and budgetary processes be documented and updated regularly; provide for cross training of staff of key staff and functions; and reconcile bank accounts for accuracy and propriety. ABC has instituted the proper controls and developed policies and procedures required.

In 2001, ABC implemented an internal Field Office Review Policy to monitor and evaluate its regional offices. The specific goals of the policy are to ensure:

- Standardization on policy and procedures in order to make the licensing application process and disciplinary actions uniform for stakeholders (the public, industry and local government agencies).
- Identify Operational Needs within offices and identify and implement solutions for meeting those needs.
- Help District in implementing policy and procedures. This may involve additional contacts with local government, internal office modifications or additional training of staff.
- New Concepts including short cuts, controls and eliminating extraneous work by field offices.
- Feedback for both Division and the Executive staff on the actual field operations.

The Field Office Review Policy established that the reviews were to be conducted by an independent third party outside the field office's chain of command to help ensure the objectivity of the findings. Those selected to conduct the field office reviews have routinely been retired members of the Department's Executive Staff. Those selected to conduct the reviews report their findings directly to the Assistant Director responsible for the field office being reviewed.

Field office review reports are completed on a standardized form covering three general areas including: General Office Administration, Licensing and Enforcement. These general areas combined encompass over 140 specific areas inspected ranging from the condition of the office facilities to the adherence to policy when processing cash received for licensing to the destruction of evidence seized during enforcement actions. Since the initiation of the program, ABC completed an average of five Field Office Reviews annually. During the last two years these reviews were suspended due to a lack of available resources due to budgetary restrictions in place. It is anticipated that the reviews will resume once fiscal restraints allow.

## **CONCLUSION:**

To date ABC has been unsuccessful in convincing DPA to assist in addressing these issues. The net effect of this is ABC will soon no longer be able to proactively combat quality of life issues that arise from the undesirable and illegal activities that occur in and around many of the bars, night clubs and liquor stores in the communities we serve. ABC's current vacancy rate of 23% (combination of all three classifications within the series) has significantly degraded the Department's law enforcement capabilities. These significant staffing shortages within the ABC Investigator classifications have required the Department's leadership to utilize a triage approach addressing only the most critical problems in the State. This unfortunate situation has resulted in an unknown number of criminal acts not being detected or curtailed. With the Department's Investigator vacancies anticipated to continue to hover between 22%-27% for the foreseeable future the current situation will only be further exacerbated.

ABC is authorized a total of 145 investigators within its classification series to police the activities at 81,659 permanent licensed venues and an additional 27,000 special event venues licensed as of the end of fiscal year 08/09. Even assuming the benefit of an unrealistic zero percent vacancy rate, this equates to each investigator being responsible for 750 licensed venues. Our current vacancy rate would equate to an unacceptable ratio of one investigator for every 996 licensed venues. Should ABC reach its projected vacancy rate of 27% in the near future, each investigator will be responsible to police a staggering 1045 licensed venues.

Local law enforcement agencies are not immune to recruitment and retention issues and are also experiencing never before seen vacancy rates. Agencies up and down the State of California have slashed their own vice / narcotic units and now concentrate only on responding to high priority calls for crimes in progress. They can no longer afford to address the types of crime ABC specializes in due to their own competing priorities.

Studies support the fact that communities that fail to aggressively concentrate on alcohol enforcement will ultimately suffer a substantial increase in violent crime. With local law enforcement unavailable to investigate crimes in and around ABC licensed premises, this Department is charged now more than ever with ensuring our communities are protected from disorderly bars, night clubs and liquor stores. The present compensation package does not allow us to fully staff our Department and

as a result, the public is not afforded the law enforcement protections they deserve and expect. Crimes that occur in and around ABC licensed premises include homicide, rape, assault, narcotics sales, prostitution, public intoxication and of course, minors purchasing and consuming alcohol.

The unfortunate reality of our future, absent an appropriate compensation package, is that this program will be one of several slashed or discontinued. ABC will no longer have adequate staffing to allow us the luxury of proactive enforcement programs. Enforcement reductions in these areas could promote the perception that the Administration does not take these issues seriously.

The Department will continue to face challenges recruiting and retaining qualified law enforcement professionals. We are competing with local police and sheriff departments and other state agencies for the best candidates and recent contract negotiations have created increasing salary disparities with the Department of Justice. Special Agents at the Department of Justice are presently paid 10% more than ABC Investigators and the new contract will exacerbate this inequity and increase the pay disparity to 19%. Disparities between ABC and various limited law enforcement classifications at California Department of Corrections and Rehabilitation is a significant 29%.

Existing vacancies, coupled with the potential loss of more staff due to compensation inequities, as well as retirements within our sworn ranks (20 in the last two years), is a significant management problem and will create backlogs in carrying out ABC's constitutionally mandated license and law enforcement responsibilities. In addition, many of the Department's special programs detailed later in this document may have to be curtailed or eliminated. We are presently working with the Department of Personnel Administration to address these issues and offer ABC sworn employees more financial incentives and equity.

ABC will continue to work with DPA in an effort to address the issues preventing ABC from hiring and retaining qualified sworn employees and meeting our enforcement mandates.